Nos. 1088-1089 81-82

In the Supreme Court of the United States

OCTOBER TERM, 1945

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

CHENERY CORPORATION, ET AL.

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

FEDERAL WATER AND GAS CORPORATION

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. —

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

CHENERY CORPORATION, ET AL.

No. —

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

FEDERAL WATER AND GAS CORPORATION

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the Securities and Exchange Commission, prays that writs of certiorari be issued in the above cases to review the judgment of the United States Court of Appeals for the District of Columbia entered February 4, 1946, which reversed the Commission's order of February 7, 1945, issued pursuant to the provisions of the Public Utility Holding Company Act of 1935.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 172–179) has not yet been officially reported. The findings and opinion of the Commission, which accompanied its order of February 7, 1945 (R. 128), are reported in S. E. C. Holding Company Act Release No. 5584.

JURISDICTION

The judgment of the Court of Appeals was entered February 4, 1946 (R. 180). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended, which is made applicable by Section 24 (a) of the Public Utility Holding Company Act of 1935.

QUESTIONS PRESENTED

Are the Commission's findings, opinion and order of February 7, 1945, consistent with the decision of this Court in *Securities and Exchange Commission* v. *Chenery Corporation, et al.*, 318 U. S. 80?

More explicitly, the question is whether the Commission may, on the basis of its administrative experience in effectuating the policies of the Public Utility Holding Company Act of 1935 and as applied to the facts of a specific case, but without issuing a general regulation, impose requirements designed to prevent the management of a company which is the subject of reorganization proceedings under Section 11 (e) of the Act from

profiting from purchases of securities in the course of the reorganization.

STATUTE INVOLVED

The pertinent provisions of the Public Utility Holding Company Act of 1935, c. 687, 49 Stat. 803, 15 U. S. C. 6, Sec. 79 et seq., are set forth in the Appendix, *infra*, pp. 22–23.

STATEMENT

This is the second appearance of this case before this Court. In *Securities and Exchange Commission* v. *Chenery Corporation, et al.*, 318 U. S. 80 (R. 98), this Court had before it the Commission's order of September 24, 1941, approving the plan of reorganization of Federal Water Service Corporation (Federal) under the provisions of the Public Utility Holding Company Act of 1935. In its findings and opinion the Commission had cited certain equity precedents as applicable under the "fair and equitable" standard of Section 11 (e) of the Holding Company Act. The Commission construed these precedents to require that the management of Federal should not profit through the plan of reorganization by participating on a parity with the public shareholders, with respect to preferred shares they had purchased for control and profit purposes while acting as reorganization managers during the course of the Commission's proceeding. The

Commission's order, in effect, required the management to surrender these preferred shares to Federal Water and Gas Corporation (Federal Water), the new corporation formed in the reorganization, at cost plus four percent interest.[1] This Court held that the Commission had erred in assuming those equity precedents to be controlling, absent findings that "the specific transactions under scrutiny showed misuse by the respondents of their position as reorganization managers." While this Court indicated that the Commission could have dealt with the problem of trading by reorganization managers in proceedings under the Act on the basis of its special experience in administering the legislative policies of the Act, this Court pointed out that the Commission's opinion did not set forth the findings and considerations which would justify its order on that ground. In setting aside the Commission's order, the Court remanded the case to the Commission "for such further proceedings, not inconsistent with [the

[1] Procedurally, the Commission, in findings and opinion issued March 24, 1941, had indicated, in reliance upon equity precedents, that it would be obliged to find the plan unfair and inequitable unless amended to provide, *inter alia*, for some treatment of the shares acquired by the management that would not involve their profiting through the plan. The plan was subsequently amended to provide for surrender of such shares on the terms stated above and the Commission's order of September 24, 1941, formally approved the plan so amended.

opinion of this Court] as may be appropriate'" (R. 111; 318 U. S. 80, 95).

Following the decision and remand of the case, further proceedings were had before the Commission, as a result of which it reaffirmed its prior conclusion in the findings, opinion and order of February 7, 1945 (R. 128, 169).[3] The Commission's present order was based upon its administrative judgment and experience as applied to the specific facts of the case. The Commission emphasized the characteristically dominant position and powers of Federal's management in the reorganization proceeding under the Act and their duty to bring about with reasonable promptness a fair, equitable and appropriate plan.[4]

---

[2] In form this Court's remand was to the Court of Appeals for the District of Columbia, which had set aside the Commission's order, for remand by that court to the Commission on the terms quoted above.

[3] Although no additional evidence was taken in the Commission's further proceedings, briefs were filed and oral arguments were heard (R. 129).

[4] Federal's preferred stockholders had received no dividends since 1931. At the time of the Commission's proceeding earnings were currently available but the management was precluded from declaring dividends because of a recognized capital impairment. The special powers of Federal's management were found to flow from normal corporate powers combined with special reorganization powers vested in a holding company management in proceedings under the Act. Normal corporate powers allowed Federal's management to regulate the corporate and system accounts, time the solution of major financial problems of the subsidiaries, regulate the flow of earnings, and ultimately affect the dividend status and market value

It held that the consequence of their embarking upon a substantial program of purchasing Federal's preferred stock created a conflict between their personal interest in effectuating the purchase and the proper discharge of their obligations to the public security holders, including those from whom they purchased the preferred stock. In its opinion states, the Commission's experience led it to conclude that (R. 156–159)—

> The combination of these multiple powers in the management while a reorganization is under consideration places at its command a formidable battery of devices that would enable it, if it should choose to use them selfishly, to affect in material degree the ultimate allocation of new securities among the various existing classes, to influence the market for its own gain, and to manipulate or obstruct the reorganization required by the mandate of the statute. If, in this setting, the management enters upon

---

of the preferred stock. Special reorganization powers enabled Federal's management to control the terms and timing of the plans, the negotiations with the Commission's staff over plans and changes of plans, including the respective participations of the various classes of stocks, and the public announcements of plans. This combined battery of powers permitted Federal's management to be spokesmen for all public security holders as well as themselves in the reorganization proceeding. The Commission also found that Federal's management held numerous important positions throughout the system—a finding of considerable importance on the question of their struggle for preservation of control since such positions unquestionably carried with them substantial perquisites in salary and prestige.

a stock purchase program there is inevitably the temptation, as well as the opportunity, to shape the reorganization proceeding so as to encourage public selling on the market at low prices. Public announcements by the management can be directed to that end. Steps can be taken that may delay and protract the proceedings in such a manner as to make senior stockholders lose hope of receiving dividends within a reasonable time and induce some of them to sell out at a sacrifice.

* * * * *

When * * * members of a management determine to obtain personal advantage out of a reorganization by engaging in a program of buying outstanding securities, for the purpose of realizing either the voting power or the enhanced value they expect those securities to have in the reorganized corporation, or both, the conflict is [neither] normal or unavoidable. The managers then have undertaken to act affirmatively in their own interest, with reference to the reorganization, and anything they gain therefrom must necessarily be at the expense of persons whom they are under a duty to represent. At that point, any management, no matter how honorable, makes its own motives suspect. Indeed, once it enters upon such a program even its acts prior to reorganization are compromised in retrospect because for all practical purposes it is impossible for anyone, attempt-

ing at a later time to trace back and sort out the motives that guided such action, to reach a firm conclusion that managerial judgment was not in at least some respects exercised in contemplation of the personal gain to be realized ultimately from the reorganization.

It is our view that no management of a holding company can engage in a program of buying its company's stock during the course of a reorganization under the Act, without raising the probability that in one way or another the personal interests it seeks to further through its program will be opposed to its duties to exercise disinterested judgment in matters pertaining to subsidiaries' accounting, budgetary and dividend policies, to present publicly an unprejudiced financial picture of the enterprise, and to effectuate a fair and feasible plan expeditiously. The natural inclination of any person to buy cheaply, coupled with the normal and extraordinary powers of a holding-company management to further that objective by creating the conditions which make cheap buying possible during the course of a reorganization before us, are bound to create a risk—perhaps in some cases merely potential but in all cases very real—of harm to all of the company's public security holders whether or not they elect to sell. In such a case the managers are not buying merely against future market risks. They are buying against a reorganization which they themselves are planning, during

> a period in which they exercise, as far as the corporation is concerned, a dominant influence over most of the factors that affect the progress and outcome of the reorganization, including not only the daily operations of the system companies but also, to a very large extent, the timing of steps to be taken on behalf of the reorganizing company and public statements concerning the entire enterprise.

In making no finding that the conduct of this particular reorganization was in fact influenced or affected by the antagonistic self-interest of Federal's management, the Commission could not and did not make the converse finding that their conduct was in no way influenced thereby.[5] On the

[5] The Commission in its present opinion has explained the wholly argumentative meaning which it had intended to convey by the so-called "admissions" of fair dealing on the part of Federal's managers, as referred to in this Court's opinion (R. 164). What the Commission meant in its original opinion, and what its counsel in briefs and argument upon appeal had assumed, was merely that the inflexible rule of equity on which it originally relied did not even permit inquiry into the question whether the transactions of the reorganization managers here were characterized by "honesty, full disclosure and purchase at a fair price." The opinion of the court below not only ignores the Commission's explanation of why it actually made no findings whatever on the subject of the good or bad faith of Federal's managers, but instead emphasizes again and again, without any foundation in the record, what it terms affirmative findings that "petitioners' purchases of stock were in all respects fair, honest and above-board, resulting neither in any unjust enrichment to themselves nor harm to other stockholders or the public" (R. 175), and that "the result was neither unfair nor

contrary, for reasons set forth in its opinion (R. 158–64), the Commission concluded that it could not probe all of the subtle factors which might tend to show conscious wrongdoing in any course of action undertaken in a particular reorganization proceeding.

Upon petitions for review filed by Chenery Corporation, et al. (R. 2) and by Federal Water and Gas Corporation (R. 14), the court below reversed the Commission's order in a decision more fully discussed below.

REASONS FOR GRANTING THE WRIT

The court below considered—and we agree—that the basic question before it was "whether the Commission has rightly construed and rightly followed" the opinion of this Court in the first Chenery case (R. 174). As the court below declared, "the Supreme Court can itself best answer this question." (R. 174). We submit that in reversing the Commission's order for failure to comply with this Court's opinion the court below interpreted that opinion as imposing restrictions on the Commission's administration of the policies of the Act which this Court specifically disclaimed. As this Court recognized in granting the writ of certiorari to review the first *Chenery* case, the question here of management trading during the course of a reorganization under the Holding Company Act is one of importance which "looms

---

inequitable to the persons affected by the plan." (R. 174). See R. 174–177. The Commission has made no such findings.

large in the administration of the Act." (R. 99; 318 U. S. 81).

I. As we understand it, the court below interpreted this Court's opinion to mean that, absent findings of conscious wrongdoing, the Commission was not authorized to determine by order in the particular case whether it was consistent with the "fair and equitable" standard of Section 11 (e) of the Act to permit Federal's management to realize a profit through their purchases. The court below referred to the possibility that the Commission might, by a rule applicable to future transactions, protect investors against the risks of harm from management's antagonistic interest in making purchases in the course of the reorganization. Without expressing an opinion on the permissibility of such a rule, the court below held "that, without such a rule, of which notice is given * * *" the purchases here involved "may not properly be 'outlawed or denied' their ordinary effect" (R. 179). Apparently the court below saw no rational basis for the Commission's conclusion that it could not affirmatively find "fair and equitable" in the case before it a plan which would enable the management of Federal to profit by purchases which inherently carried with them, at least, the potentiality of harm to investors. In so far as that holding purports to rest upon this Court's opinion, we believe it twists a holding that the Commission's earlier decision was not supported by the equity precedents on which the Com-

mission relied into a holding that principles of "fairness and equity" so clearly sanctioned the management purchases as to make it arbitrary for the Commission—despite its administrative judgment as to the risk of harm to investors—to limit the management to cost in this case.

We cannot so construe this Court's opinion. We believe that the opinion read as a whole shows that this Court was remanding the case to the Commission for the exercise by it of an administrative discretion, in the light of principles enunciated in the decision, to decide by order what result would be required by the application of the statutory standards to this particular case. As this Court said "'Determination of what is 'fair and equitable' calls for the application of ethical standards to particular sets of facts. But these standards are not static." (R. 105–6; 318 U. S. 89.) The court below, holding that in the absence of a showing of conscious wrongdoing the Commission can act only by prospective regulation, treated this Court's opinion as leaving the Commission no choice but to permit parity treatment to the purchases by Federal's management. We note below specific references to portions of this Court's opinion which seem to us wholly inconsistent with that interpretation.

A. This Court was at pains to explain that the Commission's original opinion had to be reviewed solely on the basis of the "grounds * * * upon which the record discloses that its action was based",

i. e., "the principles of equity announced by courts," and not the administrative considerations on which the Commission "urges here that the order should nevertheless be sustained." (R. 104, 106; 318 U. S. 87, 90.)

B. In refusing to determine whether the Commission's order might be sustained upon considerations urged in its brief but not explicated in the Commission's original opinion, this Court explains why it deemed inapplicable to an administrative order the rule under which a judicial decision may be affirmed on other grounds, although the reviewing court rejects the grounds upon which the lower court's decision was based. (R. 104–5; 318 U. S. 88.)

C. In rejecting the theory on which the court below reversed the earlier order of the Commission, this Court did not affirm upon different grounds. The earlier decision had required parity of treatment for the management, holding that Section 17 (applicable to short term trading) expressed the limits of the Commission's powers to deal with management's purchases in the course of a reorganization under the Act. On the contrary, this Court recognized and described at length the extraordinary reorganization powers exercised by Federal's management and concluded that Sections 7 (d) (6), 7 (e) and 11 (e) were intended "to confer upon the Commission broad powers for the protection of the public" against reorganization abuses; and that Section 17 was not a "limitation upon the power of the

Commission to deal with other situations in which officers and directors have failed to measure up to the standards of conduct imposed upon them by the Act." (R. 107–8; 318 U. S. 90–92.)

D. Finally, the court below wholly disregarded the gist of this Court's rulings, as stated by way of recapitulation in the next to the last paragraph of its opinion, that the Commission's administrative judgment in an area entrusted to it by Congress may not be set aside "because the reviewing court might have made a different determination were it empowered to do so"; that the words of *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177, 197, that "all we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it," were "equally applicable here"; that this Court's decision was not "imposing any trammels on [the Commission's] powers"; and that this Court was "merely" holding in this case "that an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained." (R. 110–11; 318 U. S. 94–5.)

2. The court below objected to the Commission resting its present decision upon its administrative judgment as to the probability of harm to investors, without proof of conscious wrongdoing in the particular case. The court below characterized this action by the Commission as "laying down a rule of fiat," and as a decision based upon

"an unsupported suspicion," "unresolved doubts" and "weaknesses or selfishness which the Commission believes is inherent in human nature." (R. 178–179)[6] According to the court below, the effect of countenancing such administrative action is to permit the Commission "to exercise a power of disapproval free of judicial review" and to leave the Commission "free of the inhibitions imposed by the particular facts * * * influenced and impelled only by its own doubts." (R. 178.)

Without disputing the rational basis for the Commission's inferences derived from its experience with reorganizations, the court below makes the difficulty of subjecting such an administrative judgment to judicial review a ground for precluding its exercise. In limiting the Commission to the possibility of dealing with the problem by a prospective regulation or rule it wholly ignored the statutory necessity for affirmative findings to uphold the plan by order as fair and equitable, and gave little, if any, weight to this Court's intimation that "Abuse of corporate position, influence, and access to information may raise questions so subtle that the law can deal with them effectively only by prohibitions not concerned with the fairness of a particular transaction." (R. 179; 318 U. S. 92.)

The lower court's refusal to consider the Com-

[6] Thus censuring the Commission's skeptical appraisal of the management's transactions, the court below substituted its own judgment which, in effect, viewed the purchase program as no more than a sound business practice. (R. 179.)

mission's decision as a general standard or policy[7] laid down in the particular case through adoption of the traditional common law technique is not only wholly at variance with our reading of this Court's opinion in the *Chenery* case, but is inconsistent with *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793, in which this court upheld the use of a similar technique by the National Labor Relations Board. See also *Virginia Electric & Power Co.* v. *N. L. R. B.*, 319 U. S. 533, 543;[8] *Phelps Dodge Corp.*[9] v. *N. L. R. B.*, 313 U. S. 177.

---

[7] In charging that the Commission "says" the standard laid down in this case "can not fairly be generally applied" (R. 176); that the Commission makes a "claim to unfettered discretion"; and "insists upon an absolute right to approve in one case and to refuse to approve in another," (R. 179) the court below has misread the Commission's observations as to why even a formal written rule would not eliminate the case by case necessity of determining on given facts when the rule is or is not applicable, and of varying the form of the remedy to meet the needs of specific cases. (R. 166–68, and note 31.)

[8] In *Virginia Electric & Power Co.* v. *N. L. R. B.*, 319 U. S. 533, 543, this Court declared: "It is * * * wrong * * * to force [the Board] to inquire into the amount of damages actually sustained. Whether and to what extent such matters should be considered is a complex problem for the Board to decide in the light of its administrative experience and knowledge."

[9] Following the remand of this Court in the *Phelps Dodge* case, the Board reaffirmed its determination on grounds which it declared "do not vary from case to case." *Matter of Phelps Dodge Corp.*, 35 N. L. R. B. 418, 421. This reaffirmed decision was enforced by the Circuit Court of Appeals for the Second Circuit in an unreported judicial order without opinion.

Contrary to the intimations of the court below, the Commission's present opinion does set forth a rational basis for its judgment on the undisputed facts. See, *inter alia*, the excerpt quoted *supra* pp. 6–9. What the court below lost sight of in its condemnation of the Commission's present decision is that there was ample room for judicial review of the Commission's findings in the present case—or would have been if the management had seriously challenged either the substantiality of the evidence, so far as the findings of fact are concerned, or "the rationality between what is proved and what is inferred," insofar as the Commission's conclusion was integrated with its special experience. *See Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793, 805.

3. In holding that this Court's opinion precluded the Commission from coping with the problem of managerial purchases during the course of a reorganization under the Act, except by a general rule operating prospectively "so that all may know of its existence," (R. 179) the court below has misconstrued as a holding certain references by this Court to the Commission's rule-making powers under Section 11 (e) of the Act (R. 175).[10] As we

[10] The expressions of this Court quoted by the court below in support of the latter's holding that the Commission could act only by general rule, are as follows:

"* * * Had the Commission, acting upon its experience and peculiar competence, promulgated a general rule of which its order here was a particular application, the

read this Court's opinion we think it clear that those remarks of this Court were intended only as illustrative of the courses of action open to the Commission in acting in this field. This Court had before it the provisions of Section 11 (e) and was plainly aware that that section authorized the Commission to supervise the conditions under which plans are proposed, by *order* as well as by rules and regulations, and indeed the Commission may approve a plan only by "order". Accordingly, this Court could not have intended to prevent the Commission from deciding this specific case on the basis of general administrative experience evolved and applied in the case by case procedure clearly contemplated by the section.[11] This course seems to us unquestionably within the scope of this Court's mandate, in the light of this Court's opinion read as a whole. By contrast, the holding of the court below makes this Court's remand merely a direction to approve the plan which the Commission had previously disapproved.

---

problem for our consideration would be very different * * * Congress itself did not proscribe the respondents' purchases of preferred stock in Federal. Established judicial doctrines do not condemn these transactions. Nor has the Commission, acting under the rule-making powers delegated to it by § 11 (e), promulgated new general standards of conduct." (R. 108–9; 318 U. S. 92–3).

[11] See Report of the Attorney General's Committee on Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess., p. 29.

What the court below thus overlooked is that the Commission was dealing with a particular case which could be disposed of only by *order* and only after the Commission had determined whether, on the basis of particular facts viewed in the light of its experience, it could or could not find the plan "fair and equitable". No general rule of any type whatsoever could have obviated the necessity for acting by order in relating that rule to the facts of the particular case. In consequence, it is of no bearing upon respondents' case either before the Commission or the courts that there was no previously announced rule, unless, as respondents' urged here in the first case and in the court below in the present case, the promulgation of a general standard in the decision of the particular case raises questions of improper retroactivity.

Careful analysis of the arguments that might be raised as to retroactivity in a case such as this would show that the issue presented is, in essence, whether the specific considerations brought to bear on the issues by the Commission can fairly be said to be inherent in applying the standards and policies of the Act. If they are, there is no improper retroactivity but merely implementation of the statutory command. This Court expressly found that the statute provided a firm basis for the power exercised by the Commission (R. 107–8; 318 U. S. 90–92). In so finding, this Court, we believe, finally and definitively pre-

cluded the raising of any issue of improper retroactivity in this case.

While the Commission has in some instances (not involving reorganization managers) announced for the future a new administrative policy not applied to the problem before it,[12] in this instance the Commission concluded that it should not thus limit action for the protection of investors because the consequence "would give the interveners a premium for risking the interests of the public investors, to the detriment of the latter, and, as well, to the detriment of investors in many other holding company securities, and of the public interest, within the meaning of Sections 7 (d) (6) and 7 (e)." (R. 166.) To have held that reorganization managers may pursue their personal advantage at the risk of harm to public security holders and profit thereby merely because the government agency has not expressly forwarned them against such conduct would permit the "lax view of fiduciary obligations" which this Court rejected (R. 102; 318 U. S. 85).

---

[12] See, *El Paso Electric Co.*, 8 S. E. C. 366, 377–78 (1940); *Mississippi River Power Co.*, Holding Company Act Release No. 5776, pp. 27–28 (May 4, 1945); and *Western Light and Telephone Co.*, Holding Company Act Release No. 5902 (July 2, 1945). In those cases, unlike the present case, reliance upon the existence of prior Commission decisions which might have been considered to have reached a contrary result was held to justify non-application of the newly announced standards in the pending case.

CONCLUSION

Because the decision of the court below misconstrues the decision of this Court in the first *Chenery* case, fails to follow other applicable decisions of this Court, and wrongly decides a question of public importance in the administration of the Act, the petition for a writ of certiorari should be granted.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

ROGER S. FOSTER,
Solicitor,
Securities and Exchange Commission.

APRIL 1946.

APPENDIX

Section 7 (d) (6) of the Public Utility Act of 1935 (49 Stat. 803, 15 U. S. C. § 79, *et seq.*), in pertinent part, provides:

> If the requirements of subsections (e) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—
>
> * * * * * *
>
> the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

Section 7 (e) provides:

> If the requirements of subsection (g) are satisfied, the Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers.

Section 11 (e) provides:

> In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding com-

pany or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

U. S. GOVERNMENT PRINTING OFFICE 1935